IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

WP(C).No. 1591 of 2007(M)

OS.333/2004 of MUNSIFF COURT,HARIPAD

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PETITIONER:

SIRAJUDEEN, AGED 55 YEARS,
S/O. KASIM PILLAI, TAJ MANZIL, KEERIKAD VILLAGE,
KARTHIKAPPALLY, ALAPPUZHA DISTRICT.

BY ADV. SRI.S.SHANAVAS KHAN

RESPONDENTS:

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1. SUBASH CHANDRA BOSE, AGED 51 YEARS,
S/O. PADMANABHAN, `SRUTHI', PILAPPUZHA MURI,
HARIPAD, ALAPPUZHA.

2. SUBRAMANIAN, AGED 42 YEARS,
S/O.KUMARA VELU PILLAI, THANATHUPARAMBIL,
ASHRAMAM WARD, MAMMOOD, ALAPPUZHA.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.1591 OF 2007

DATED THIS THE 15th DAY OF JANUARY, 2007

JUDGMENT

Petitioner is not a party to O.S.333/04 on the file of Musnsiff Court, Haripad. This petition is filed under Article 227 of Constitution of India for a direction to Munsiff to dispose of I.A.1712/06 filed in O.S.333/04. First respondent filed that suit against second respondent for realisation of the amount due. First respondent filed an application under Order XXXVIII Rule 5 of Code of Civil Procedure and got the property attached before judgment. The case of petitioner is that he filed I.A.1712/06 to lift the order of attachment on 1.1106 and inspite of repeated requests, learned Munsiff is not passing any order in the application and therefore necessary direction may be issued to Munsiff to dispose of I.A.1712/06. If the case of petitioner is that the property attached belongs to him, the remedy of petitioner is to file a claim petition. Without filing the claim petition he cannot seek an order vacating the order, so long as he is not a party to the suit or in the application where under the order of attachment was passed. What was attached by the Court is the right of second respondent over the property. In such circumstances, the remedy of petitioner is to file a

claim petition and seek appropriate order from Munsiff Court.

Petition is dismissed.

M.SASIDHARAN NAMBIAR,JUDGE

Acd